

HON. DEBORAH KIM CHRISTOPHER
20th Judicial District Court
Lake County Courthouse
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Polson, MT 59860
(406) 883-7360

MONTANA TWENTIETH JUDICIAL DISTRICT COURT, LAKE COUNTY

RONDA NOLAND and KENNETH NOLAND,

Cause No. DV 04-144

Plaintiffs,

vs.

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL DISCOVERY**

ROBERT SCHURE, M.D., ST. LUKE
COMMUNITY HOSPITAL/ST. LUKE
COMMUNITY HEALTHCARE NETWORK,
MISSION VALLEY HEALTH CENTER, and
JOHN DOES ONE through TEN,

Defendants.

The above cause came before the Court upon Plaintiffs' Motion to Compel Discovery and Brief in Support filed on May 30, 2006. The Court has considered the motion, the brief, and the pleadings on file in this matter and now enters the following:

FACTS

1. Plaintiffs have alleged that Defendant, Robert Schure, M.D., breached his standard of care and was negligent in his treatment of Plaintiff, Rhonda Noland, causing her to suffer long-term and permanent damages. Plaintiffs' Amended Complaint, p. 5, lines 10-16.

2. On April 6, 2006, Dr. Schure was deposed by Plaintiffs' counsel. In the course of the deposition, Plaintiff's counsel asked Dr. Schure if he "had ever had [his] license revoked, suspended, or restricted in any way?" Deposition of Robert Schure, M.D., April 6, 2006, p. 65, lines 20-21. Dr. Schure responded that his license had been revoked a week prior to his

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1 deposition and that the circumstances of the revocation involved an agreement with the Montana
2 Professional Assistance Program ("MPAP"), in which he allegedly "took prescribed drugs but
3 did not report it to them in a timely fashion." *Id.*, p. 65, line 25; p. 66, lines 1-2.

4 3. Upon learning of this information, Plaintiff's counsel attempted to open discourse
5 on this topic with Dr. Schure, at which point Dr. Schure's counsel objected on the basis that "it's
6 our understanding and belief that all information relating to the activities of the physician
7 assistance program in Montana are confidential and not for public dissemination." *Id.*, p. 66,
8 lines 14-17. Dr. Schure's counsel then instructed Dr. Schure "not to answer any questions further
9 at this time on that issue." *Id.*, p. 66, lines 21-22. Plaintiff's counsel subsequently questioned the
10 basis for this objection, indicated that the information sought was relevant to Plaintiffs' claims,
11 and attempted to proceed with his inquiry. *Id.*, p. 66, lines 23-25, p. 67, lines 1-16.

12 4. After this exchange, Dr. Schure testified that he was subject to an MPAP program
13 for alcohol, drug, or substance abuse at the time of his employment with Defendants, St. Luke
14 Community Hospital et al. *Id.*, p. 69, lines 24-25, p. 70, lines 1-2.

15 5. Dr. Schure additionally testified that he was subject to such a program at the time of
16 his treatment of Plaintiff Rhonda Noland. *Id.*, p. 71, lines 17-21.

17 6. Further testimony from Dr. Schure revealed that he had also attended a clinic "for
18 the purpose of addressing a substance abuse, alcohol, or drug problem," that he had been "denied
19 medical malpractice coverage based on [his] alcohol, drug, or substance abuse problems," and
20 that Dr. Schure's "substance abuse issue . . . ha[d] been ongoing for over 20 years." *Id.*, p. 71,
21 lines 22-25, p. 72, lines 22-25, p. 73, lines 10-13.

22 7. Dr. Schure's counsel then objected to further questions concerning Dr. Schure's
23 substance abuse problems and involvement in MPAP programs or similar programs, instructing
24 Dr. Schure not to answer questions relevant to Plaintiffs' claims. *See Id.*, pp. 72-75.

1 8. Plaintiffs' counsel accordingly agreed to "move on" in his questioning of Dr. Schure
2 and indicated that the deposition would have to be reconvened upon the Court's order. *Id.*, p. 75,
3 lines 17-23.

4 9. A representative of the Montana Health Care Licensing Bureau subsequently
5 provided Plaintiffs with copies of two public documents relating to Dr. Schure's history of
6 substance abuse and the revocation of his medical license in Montana: a Notice of Proposed
7 Board Action and Opportunity for Hearing ("Notice") in the case of *In the Matter of the*
8 *Disciplinary Treatment of the License of Stanley Robert Schure, M.D., License No. 3919*, filed
9 with the Montana Board of Medical Examiners ("Board") on September 8, 2004; and Proposed
10 Findings of Fact, Conclusions of Law and Recommended Order ("Proposed Findings") filed with
11 the Board on March 31, 2006.

12 10. Each of the aforementioned documents sets forth a history of Dr. Schure's alleged
13 noncompliance with one or more Aftercare Agreements into which he entered with the MPAP as
14 a result of chemical dependency issues and three histories of related treatment. Notice, pp. 2-5;
15 Proposed Findings, pp. 2-5.

16 11. The Notice documents that the Board's Screening Panel determined, based upon Dr.
17 Schure's noncompliance with the Aftercare Agreement(s), "that there is reasonable cause to
18 believe that [Dr. Schure] ha[s] violated a statute or rule justifying disciplinary sanctions to be
19 imposed against [his] Montana license." Notice, p. 5, ¶ 2.

20 12. In its Proposed Findings, the Board concluded that Dr. Schure's repeated violations
21 of his aftercare agreements with the MPAP constituted "unprofessional conduct" as defined at
22 § 37-3-203(4), MCA, and recommended that his license be revoked accordingly. *See* Proposed
23 Findings, p. 7, section V.3., p. 8.

24 13. Specifically, the Board found that "Stanley Robert Schure failed to comply with the
25 terms of his June 15, 2005, Montana Professional Assistance Program (MPAP) contract by
26 failing to submit numerous urine specimens, failing to pre-report drug prescriptions written for

1 him, testing positive for unreported and prohibited substances, failing to inform the administrator
2 at his place of work regarding his involvement with MPAP and the need for professional
3 oversight and failing to obtain pre-approval before changing employment.” Proposed Findings,
4 p. 2, section III.1.

5 14. The Board additionally concluded that revocation of Dr. Schure’s license was
6 necessary “[b]ased upon the risk to the public,” and that “[n]o lesser sanction is sufficient at this
7 time to assure protection of the public.” Proposed Findings, p. 7, section V.3. (citing Mont. Code
8 Ann. § 37-1-312(1)(a) and (2)).

9 15. On July 31, 2006, the Board issued its Final Order, in which it adopted its Proposed
10 Finding without modification and ordered the revocation of Dr. Schure’s license to practice
11 medicine in the State of Montana. Final Order of the Board of Medical Examiners, Department
12 of Labor and Industry, State of Montana, July 31, 2006.

13 16. On August 3, 2006, the Board provided Plaintiffs’ counsel with a copy of the Final
14 Order. Affidavit of David Lighthall, p. 1, ¶ 3.

15 CONCLUSIONS OF LAW

16 1. The Montana Legislature has declared, as a matter of public policy, that “the
17 practice of medicine in the state of Montana is a privilege . . . and is not a natural right of
18 individuals,” and that is thus “necessary, as a matter of such policy and in the interests of the
19 health, happiness, safety, and welfare of the people of Montana, to provide laws and provisions
20 covering the granting of that privilege . . . to the end that the public shall be properly protected
21 against unprofessional, improper, unauthorized, and unqualified practice of medicine.” Mont.
22 Code Ann. § 37-3-101.

23 2. The Legislature has also set forth the powers of the Board, authorizing it to
24 “establish a program to assist and rehabilitate licensees who are subject to the jurisdiction of the
25 board and who are found to be physically impaired by . . . the excessive use of addictive drugs,
26

1 alcohol, or any other drug or substance.” Mont. Code Ann. § 37-3-203(4). The Montana
2 Professional Assistance Program is such a program.

3 3. The Legislature has further provided that “[n]otwithstanding any provision of state
4 law dealing with confidentiality, each licensed physician, professional standards review
5 organization, and the Montana medical association or any component society of the association
6 shall . . . report to the board any information that the physician, organization, association, [or]
7 society . . . has that appears to show that a physician is: . . . guilty of unprofessional conduct.”
8 Mont. Code Ann. § 37-3-401(1)(c).

9 4. “Unprofessional conduct” of a licensee is defined to include “. . . addiction to or
10 dependency on a habit-forming drug or controlled substance as defined in Title 50, chapter 32, as
11 a result of illegal use of the drug or controlled substance; . . . use of a habit-forming drug or
12 controlled substance as defined in Title 50, chapter 32, to the extent that the use impairs the user
13 physically or mentally; . . . [and] having a physical or mental disability that renders the licensee
14 or license applicant unable to practice the profession with reasonable skill and safety.” Mont.
15 Code Ann. § 37-1-316(10), (11) and (12).

16 5. The Montana Legislature has provided that the Department of Labor and Industry
17 may report the Board’s issuance of a notice and final order to the public. Mont. Code Ann. § 37-
18 1-311(2).

19 6. Mont. Code Ann. § 37-2-201(2), provides that “. . . **information otherwise**
20 **discoverable or admissible from an original source is not to be construed as immune from**
21 **discovery or use in any proceeding merely because it was presented during proceedings before [a**
22 **peer review] committee, nor is any member of the committee or other person appearing before it**
23 **to be prevented from testifying as to matters within his knowledge,** but he cannot be
24 questioned about his testimony or other proceedings before the committee or about opinions or
25 other actions of the committee or any member thereof.” [Emphasis added.] Accordingly, the
26 confidentiality of peer review proceedings and records under Montana statute is limited, and the

1 privilege in peer review proceedings and records provided for therein belongs to the committee
2 and its members, as opposed to a licensee under review or investigation.

3 7. The Board, by and through the Department of Labor and Industry, has substantially
4 disclosed information concerning Dr. Schure's history of substance abuse to the public under the
5 authority of Montana law. This disclosure was made in the interest of public safety and the
6 public's right to know of a medical licensee's violation of the obligations inherent in his practice
7 of medicine under a Montana state license.

8 8. Accordingly, the information Plaintiffs seek is obviously in the control of the
9 Defendant and exists independent of the privilege a peer review committee might assert in that
10 information under the circumstances. As such, that information is discoverable.

11 9. Plaintiffs' right to know of the level and extent of Dr. Schure's impairment at the
12 time of his treatment of Ronda Noland outweighs the privacy right asserted by Defendant Dr.
13 Schure in this case.

14 10. Consequently, evidence of Dr. Schure's impairment and the circumstances related
15 thereto is discoverable as it is relevant and related to Plaintiffs' negligence and punitive damages
16 claims.

17 11. The information sought by Plaintiff is further discoverable as it is relevant and
18 related to Dr. Schure's testimony regarding the applicable standard of care and his affirmative
19 defenses.

20 ORDER

21 In accordance with the foregoing Findings of Fact and Conclusions of Law, Plaintiffs'
22 Motion to Compel Discovery is hereby GRANTED.

23 IT IS HEREBY ORDERED as follows:

24 1. That Defendant Robert Schure M.D. submit to additional sworn deposition
25 testimony and answer discovery requests in response to Plaintiffs' inquiries concerning, but not
26 limited to, his substance abuse at the time of his treatment of Plaintiff Ronda Noland, his history

1 of substance abuse and treatment therefore, his violation of any aftercare agreements into which
2 he entered with any Professional Assistance Programs, and any disciplinary action(s) taken
3 against him as a result;

4 2. That the deposition shall be scheduled by the parties to take place within thirty (30)
5 days of the date of this Order; and,

6 3. That Defendant, Robert Schure, M.D., shall pay the costs of the deposition.

7 DATED this 28th day of August, 2006.

8 Deborah Kim Christopher

9 Deborah Kim Christopher
10 District Judge

11 8/28/06 Via U.S. Mail
12 pc: Steven S. Carey, Esq.
Konrad K. Koolen, Esq.
Peter J. Stokstad, Esq.
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